UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KEVIN MCCORMICK, Plaintiff, v. SETERUS, INC., Defendant.	CIVIL ACTION 1:16-cv-08553 COMPLAINT JURY TRIAL DEMANDED

COMPLAINT

NOW COMES the Plaintiff, KEVIN MCCORMICK ("Plaintiff"), by and through his attorneys, SULAIMAN LAW GROUP, LTD., complaining of the Defendant, SETERUS, INC. ("Seterus"), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action seeking redress for Seterus' violations of the Fair Debt Collection Practices Act ("FDCPA") pursuant to 15 U.S.C. §1692 and violations of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") pursuant to 815 ILCS 505/1 et seq.

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by the FDCPA, 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States.

3. The Court has supplemental jurisdiction over the state law ICFA claim under 28 U.S.C. §1367.

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant's unlawful conduct relates to a debt incurred by Plaintiff in this District.

PARTIES

5. Plaintiff is a consumer and natural person over 18 years-of-age who at all times relevant, owned real property located at 1396 Bow String Court, Carol Stream, Illinois 60188 ("subject property").

6. Plaintiff is a "consumer" as defined by the FDCPA, 15 U.S.C. §1692a(3).

7. Defendant Seterus is a Delaware corporation with its principal place of business located at 14523 SW Millikan Way, Beaverton, Oregon 97005 and its registered agent in Illinois is C T Corporation System located at 208 South LaSalle Street, Suite 814, Chicago, Illinois 60604. Seterus is a foreign company whose primary business is the collection of debts owed to others and servicing loans across the country, including the state of Illinois.

8. Seterus is a debt buyer that is in the business of purchasing debts which are in default.

9. Seterus is a "debt collector" as defined by the FDCPA, 15 U.S.C. §1692a(6), because it regularly uses the mails and/or the telephone to collect, or attempt to collect, delinquent consumer accounts.

10. At all times relevant to this complaint, Seterus was collecting on a consumer debt as defined by 15 U.S.C. §1692a(5).

BANKRUPTCY CASE

11. In or around June 2004, Plaintiff executed a mortgage and note ("subject debt" or "subject loan") in favor of Countrywide Financial, secured by the subject property.

12. JPMorgan Chase ("Chase") subsequently acquired the subject loan and Ocwen Loan Servicing ("Ocwen") subsequently began servicing the subject loan.

13. Plaintiff defaulted on the subject loan in April of 2015.

14. On May 29, 2015, Plaintiff filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court, Northern District of Illinois, Case Number 15-19002 ("bankruptcy").

15. Schedule D of the bankruptcy petition listed the subject loan, a pre-petition debt to Ocwen secured by the subject property, in the amount of $147,025.00. *See* Exhibit A, a true and correct copy of Schedule D filed in Plaintiff's bankruptcy case.

16. On June 1, 2015, Plaintiff filed his Original Chapter 13 Plan and by virtue of listing Ocwen as a creditor, the Bankruptcy Noticing Center ("BNC") served Ocwen with notice of Plaintiff's bankruptcy filing and Plaintiff's Chapter 13 Plan. *See* Exhibit B, a true and correct copy of Plaintiff's Chapter 13 Plan the BNC Certificate of Notice establishing service of the notice of filing and Chapter 13 Plan on Ocwen.

17. The Chapter 13 Plan provided for the subject property as follows:

> "Debtor is surrendering the real property located at 1396 Bow String Court, Carol Stream, Illinois to Ocwen Loan Servicing Mortgage and JPMorgan Chase, in full satisfaction of their claims." *Id.* at p. 5.

18. Also on June 1, 2015, the BNC served Ocwen with Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines. *See* Exhibit C, a true and correct copy of the BNC Certificate of Notice establishing service of the notice of filing upon Ocwen.

19. On August 11, 2015, the 341 Meeting of Creditors was held with the Chapter 13 Trustee. No representative of Ocwen appeared at the 341 Meeting of Creditors.

20. On August 28, 2015, Plaintiff's Chapter 13 Plan was confirmed by the Honorable Carol A. Doyle. *See* Exhibit D, a true and correct copy of the Order Confirming Plan.

21. Plaintiff fully performed his duties as set forth in his confirmed Chapter 13 Plan.

22. On July 7, 2016, Chase sent Plaintiff a Notice of service transfer and change of mortgagee clause in reference to the subject property and subject loan which stated, "[w]e'll

transfer the servicing responsibility for this mortgage to SETERUS, INC., effective 07/01/2016." *See* Exhibit E, a true and correct copy of the July 7, 2016 notice Chase sent to Plaintiff.

23. On July 14, 2016, the Bankruptcy Court entered an Order of Discharge in Plaintiff's case of all dischargeable debts, including the subject debt. *See* Exhibit F, a true and correct copy of the Order of Discharge and BNC Certificate of Notice establishing service of the Order of Discharge upon Ocwen.

24. The Order of Discharge expressly stated:

> "This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally on discharged debts. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally...." *Id.* at p. 1.

25. Pursuant to 11 U.S.C. §524, the Order of Discharge invoked the protections of the discharge injunction, prohibiting any acts to collect upon the subject debt by Ocwen, Chase, Seterus, or any other party.

26. Plaintiff's personal liability on the subject loan was extinguished via his bankruptcy discharge, thus terminating the business relationship with Ocwen, Chase, Seterus, and any of their successors and assigns.

SETERUS'S POST-DISCHARGE COMMUNICATIONS

27. After the discharge injunction had taken effect, Seterus sought to collect the subject debt from Plaintiff personally.[1]

[1] Pursuant to Plaintiff's Chapter 13 Plan, no payments were to be made to Ocwen or any of its successors or assigns, including Seterus, as Plaintiff's Confirmed Plan surrendered the subject property to Ocwen and Chase in full satisfaction of their claims.

28. After it acquired the servicing rights to the subject loan, with actual knowledge of Plaintiff's Chapter 13 bankruptcy and subsequent discharge, Seterus began sending demands for payment on the subject debt.

29. On July 15, 2016, Seterus sent Plaintiff a dunning letter demanding payment on the subject debt in the amount of $21,238.62. The dunning letter included a detachable payment coupon instructing Plaintiff to return to Seterus with payment by August 1, 2016. *See* Exhibit G, a true and correct copy of the July 15, 2016 dunning letter Seterus sent to Plaintiff.

30. The July 15, 2016 dunning letter further stated, "[t]his communication is from a debt collector as we sometimes act as a debt collector. We are attempting to collect a debt and any information obtained will be used for that purpose." *Id.*

31. Attached to the July 15, 2016 dunning letter from Seterus was a delinquency notice that stated, "[a]s of July 15, 2016, you are delinquent on your mortgage loan by 441 days. Failure to bring your loan up-to-date may result in fees, foreclosure, and the loss of your home." *Id.*

32. The delinquency notice attached to the July 15, 2016 dunning letter from Seterus also listed outstanding payment amounts of $1,345.28 for the months of February 2016 through July 2016. *Id.*

33. On July 18, 2016, Seterus sent Plaintiff another dunning letter demanding payment on the subject debt in the amount of $21,238.62 and an outstanding balance in the amount of $147,025.41. The dunning letter included a detachable payment coupon instructing Plaintiff to return to Seterus with payment by August 1, 2016. *See* Exhibit H, a true and correct copy of the July 18, 2016 dunning letter Seterus sent to Plaintiff.

34. The July 18, 2016 dunning letter further stated, "[t]his communication is from a debt collector as we sometimes act as a debt collector. We are attempting to collect a debt and any information obtained will be used for that purpose." *Id.*

35. Attached to the July 18, 2016 dunning letter from Seterus was a delinquency notice that stated, "[a]s of July 15, 2016, you are delinquent on your mortgage loan by 444 days. Failure to bring your loan up-to-date may result in fees, foreclosure, and the loss of your home." *Id.*

36. The delinquency notice attached to the July 15, 2016 dunning letter from Seterus also listed outstanding payment amounts of $1,345.28 for the months of February 2016 through July 2016. *Id.*

37. Also on July 18, 2016, Seterus sent yet another dunning letter which stated that the total amount of the subject debt is $160,969.96. *See* Exhibit I, a true and correct copy of the second dunning letter sent by Seterus on July 18, 2016.

38. The second July 18, 2016 dunning letter further stated, "[t]his communication is from a debt collector as we sometimes act as a debt collector. We are attempting to collect a debt and any information obtained will be used for that purpose." *Id.*

39. All of Seterus' collection efforts occurred after the subject debt was discharged in Plaintiff's bankruptcy.

DAMAGES

40. Plaintiff suffered from emotional distress due to Seterus' unlawful attempts to collect the discharged subject debt as he was led to believe that his bankruptcy had no legal effect. The dunning letters were highly confusing to Plaintiff.

41. Plaintiff was unduly inconvenienced and harassed by Seterus' unlawful attempts to collect the discharged subject debt.

42. Concerned about the violations of his rights and protections afforded by his bankruptcy discharge, Plaintiff sought the assistance of counsel to ensure that Seterus' collection efforts ceased.

43. Plaintiff has incurred attorney's fees as a result of Seterus' deceptive collection actions.

COUNT I – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

44. Plaintiff restates and realleges paragraphs 1 through 43 as though fully set forth herein.

45. Plaintiff is a "consumer" as defined by FDCPA §1692a(3).

46. The subject debt is a "debt" as defined by FDCPA §1692a(5) as it arises out of a transaction due or asserted to be owed or due to another for personal, family, or household purposes.

47. Seterus is a "debt collector" as defined by §1692a(6) because it regularly collects debts and uses the mail and/or the telephones to collect delinquent consumer accounts allegedly owed to a third party.

48. Moreover, Seterus is a "debt collector" because it acquired rights to the subject loan after it was in default. 15 U.S.C. §1692a(6).

49. Section 524(a)(2)-(3) of the Bankruptcy Code, commonly known as the "discharge injunction," prohibits "an act, to collect, recover or offset any such debt as a personal liability of the debtor," and "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor." 11 U.S.C. §§524(a)(2)-(3).

50. Seterus violated 15 U.S.C. §§1692e, e(2), e(10), f, and f(1) through its debt collection efforts on a debt discharged in bankruptcy.

a. Violations of FDCPA §1692e

51. Seterus violated §1692e by making false representations in its attempts to collect the subject debt as the subject debt was not owed at the times Seterus made demands on the subject debt.

52. Seterus violated §1692e(2) when it misrepresented the character, amount, or legal status of the subject debt. The subject debt was not owed at the times Seterus demanded payment because it was discharged in Plaintiff's bankruptcy.

53. Seterus violated §1692e(10) when it falsely represented that the subject debt was collectible at the times of the demands as the subject debt was not owed by virtue of Plaintiff's bankruptcy discharge.

b. Violations of FDCPA §1692f

54. Seterus violated §1692f by employing unfair and unconscionable means to collect the subject debt by sending dunning letters attempting to collect the subject debt which was discharged in Plaintiff's bankruptcy and not owed.

55. Seterus violated §1692f(1) by attempting to collect a debt that was uncollectible as a matter of law as the discharge injunction precludes collection of any discharged debt.

56. Seterus attempted to dragoon and induce Plaintiff into paying a debt that was not legally owed.

57. As an experienced creditor and debt collector, Seterus knew or should have known the ramifications of collecting on a debt that was discharged in bankruptcy.

58. Seterus knew or should have known that Plaintiff's discharged debt was uncollectable as a matter of law.

59. Upon information and belief, Seterus has no system in place to identify and cease collection of debts discharged in bankruptcy.

WHEREFORE, Plaintiff KEVIN MCCORMICK requests that this Honorable Court:

a. Declare that the practices complained of herein are unlawful and violate the aforementioned statute;
b. Award Plaintiff statutory and actual damages, in an amount to be determined at trial, for the underlying FDCPA violations;
c. Award Plaintiff costs and reasonable attorney's fees as provided under 15 U.S.C. §1692k; and
d. Award any other relief as this Honorable Court deems just and appropriate.

COUNT II – VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

60. Plaintiff restates and reallages paragraphs 1 through 43 as through fully set forth herein.

61. Plaintiff is a "person" and a "consumer" as defined in ICFA, 815 ILCS 505/ (c) and (e) respectively.

62. Seterus is engaged in commerce in the State of Illinois with regard to Plaintiff, the subject loan, and the subject property. Seterus specializes in lending, servicing, and debt collection, which are activities within the stream of commerce and utilized in their regular course of business.

63. The Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") states:

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the *concealment*, suppression or omission of such material fact . . . in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. 815 ILCS 505/2.

a. Deception and Unfairness

64. Seterus violated 815 ILCS 505/2 by engaging in unfair and deceptive acts or practices by using fraud, deception, and misrepresentations in its attempt to collect the subject debt after Plaintiff's bankruptcy discharge.

65. Seterus' demands for payment on the subject debt, which was duly scheduled and subsequently discharged in Plaintiff's bankruptcy, represents the use of false pretenses and misleading communications to attempt to collect a debt that was not owed at the time the demands for payment were made.

66. It was unfair for Seterus to mislead Plaintiff into believing the subject debt is still owed, when it is not.

67. It was unfair for Seterus to seek to collect the subject debt from Plaintiff through misleading dunning letters.

68. It was unfair for Seterus to attempt to induce Plaintiff into making payments on an uncollectible debt by sending dunning letters to Plaintiff.

69. Seterus intended that Plaintiff rely on its misrepresentations and Plaintiff did in fact rely on Seterus' misrepresentations as he was led to believe that his bankruptcy had no legal effect and that he still owed the subject debt to Seterus.

70. Seterus' demands were unfair and deceptive because they were systematically calculated to mislead Plaintiff into believing the subject debt was owed, when in fact the subject debt was discharged in Plaintiff's bankruptcy and not owed.

71. As pled above, Plaintiff has suffered damages as a result of Seterus' unlawful collection practices.

72. Upon information and belief, collecting discharged debts is an unfair and deceptive business practice willfully employed by Seterus to maximize its profits at the expense of Illinois consumers.

73. Such unfair and deceptive conduct is harmful to Illinois consumers as it can result in Illinois consumers paying debts that are not owed.

74. An award of punitive damages is appropriate because Seterus' conduct described above was outrageous, willful and wanton, showed a reckless disregard for the rights of Plaintiff and consumers, generally, and Plaintiff had no choice but to submit to the dunning letters.

WHEREFORE, Plaintiff KEVIN MCCORMICK requests that this Honorable Court:

a. Enter judgment in Plaintiff's favor and against Seterus;
b. Award Plaintiff his actual damages in an amount to be determined at trial;
c. Award Plaintiff his punitive damages in an amount to be determined at trial;
d. Award Plaintiff his reasonable attorney's fees and costs pursuant to 815 ILCS 505/10a(c); and
e. Award any other relief this Honorable Court deems equitable and just.

Plaintiff demands trial by jury.

Dated: August 31, 2016

Respectfully Submitted,

/s/ Omar T. Sulaiman, Esq.

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